5715

Office - Supreme Court, U.S.
FILED
FEB 21 1955
HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 574

IN THE MATTER OF RAY SIMON, individually and RAY SIMON OPTICAL CO., etc., et al.,

Bankrupts.

ROSCOE BIFOCAL CO., INC., a corporation,

Petitioner,

vs.

RAY SIMON, individually, and as general partner of RAY SIMON OPTICAL CO.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

BRIEF IN OPPOSITION TO CERTIORARI.

NORMAN H. NACHMAN
38 South Dearborn Street
Chicago, Illinois
Counsel for Respondent

LOUIS W. LEVIT
Of Counsel

The Scheffer Press, Inc.—ANdover 3-6850

INDEX.

	PAGE
Introductory Statement	1
Opinions below	2
Jurisdiction	2
Statute involved	2
Questions presented for review	2
Statement of the case	3
Argument	7
Conclusion	12

CITATIONS

CASES

Albinak v. Kuhn, 6 Cir., 149 F. 2d 108, 111	8
Barlow v. Federal Land Bank of Berkeley, 10 Cir., 139 F. 2d 96, 97	8
Boyce v. Chemical Plastics, Inc., 8 Cir., 175 F. 2d 839, 841-842, 843, cert. den. 338 U. S. 828	8
Brenner v. Gaunce, 9 Cir., 28 F. 2d 606	11
Brown, In re, 2 Cir., 87 F. 2d 306, 308, cert. den. sub nom. Hotel Syracuse Men's Shop v. Haight, 301 U. S. 696	8
Federal Provision Co. v. Ershowsky, 2 Cir., 94 F. 2d 574, 575	11
Feick v. Stephens, 6 Cir., 250 Fed. 185, 190, cert. den. sub nom. Union Savings Bank & Trust Co. of Cincinnati v. Feick, 248 U. S. 562	8
Fish v. East, 10 Cir., 114 F. 2d. 177, 200	8
Frederici v. Fine, 3 Cir., 34 F. 2d 284	8
Gordon v. Woods, 1 Cir., 189 F. 2d 76, 78	8

PAGE

Household Supply Co. v. Whitaker, 5 Cir., 236 Fed. 730, 731 9

Huntley v. Snider, 1 Cir., 86 F. 2d 539, 540 8

Knetzer v. Larkin, 2 Cir., 178 F. 2d 532, 534 11

Leitchter, In re, 3 Cir., 197 F. 2d 955, 958-959 cert. den. sub nom. Dworsky v. Leichter, 344 U. S. 914 10

Losey v. Losey, 9 Cir., 204 F. 2d 684, 685 8

Manson v. Williams, 213 U. S. 453, 455, 456, 457 8

Milne, In re, 40 F. Supp. 89, 91-92 10

Morris Plan Industrial Bank v. Henderson, 2 Cir., 131 F. 2d 975, 976-977 8

Santos, In re, 7 Cir., 211 F. 2d 887, 889 8

Schwartz, In re, 2 Cir., 135 F. 2d 362, 363 10

Shaffer v. Koblegard Co., 4 Cir., 183 Fed. 71, 72-73 9

Shanberg v. Saltzman, 1 Cir., 69 F. 2d. 262, 263 10

Shapiro & Ornish v. Holliday, 5 Cir., 37 F. 2d 407, affirming In re Shapiro & Ornish, 37 F. 2d 403 11

Simon v. Simon, 216 F. 2d 339 2

Smatlak, In re, 7 Cir., 99 F. 2d 687, 689 10

Sound, Inc., In re, 7 Cir., 171 F. 2d 253, 255, cert. den. sub nom. Atwell Building Corporation v. Sound, Inc., 336 U. S. 962 8

Sperling, In re, 2 Cir., 72 F. 2d 259, 260-261 11

Staunton Industrial Loan Corp. v. Wilson, 4 Cir., 190 F. 2d 706, 708 8

United States v. Harris, 9 Cir., 100 F. 2d 268, 276 8

Wetzel v. Schaeffer, 5 Cir., 124 F. 2d 308, 310, cert. den. 316 U. S. 678 8

Wolf, In re, 3 Cir., 165 F. 2d 707, 709-710 8

TEXTBOOK.

Collier on Bankruptcy, 14th Ed. volume 1, section 14.10, page 1293 10

PAGE

STATUTES.

Bankruptcy Act, section 2, 11 U.S.C. 1952 ed., section 11, volume 1, pages 1019, 1020 3

Bankruptcy Act, section 14c, 11 U.S.C. 1952 ed., section 32c, volume 1, page 1025 .....2, 7, 9, 1a

Bankruptcy Act, section 24c, 11 U.S.C. 1952 ed., section 47c, volume 1, page 1030 2

Title 28, United States Code, section 1254, 28 U.S.C. 1952 ed., section 1254, volume 3, page 4182 2

RULES.

Rule 19, Revised Rules, Supreme Court of the United States 9

Rule 23, Revised Rules, Supreme Court of the United States 1

Rule 52 (a), Federal Rules of Civil Procedure, 28 U.S.C. 1952 ed. rule 52 (a), volume 3, page 4334 ....2, 8, 2a

GENERAL ORDER.

General Order No. 47, General Orders in Bankruptcy, Supreme Court of the United States, 11 U.S.C. 1952 ed. following section 53, volume 1, page 1046 .....2, 8, 2a

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 574

IN THE MATTER OF RAY SIMON, individually and RAY SIMON OPTICAL CO., etc., et al.,

Bankrupts.

ROSCOE BIFOCAL CO., INC., a corporation,

Petitioner,

vs.

RAY SIMON, individually, and as general partner of RAY SIMON OPTICAL CO.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

BRIEF IN OPPOSITION TO CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

INTRODUCTORY STATEMENT.

The petition for certiorari, hereinafter sometimes referred to as the petition, fails to comply with the requirements of Rule 23 of the Revised Rules of this Court. We have, therefore, included in this brief without comment or argument the statements required by the rules.

OPINIONS BELOW.

Contrary to the statement of petitioner, the opinion of the Court of Appeals was published in the Federal Reporter on December 13, 1954, and is cited as *Simon* v. *Simon,* 216 F. 2d 339. The orders of the referee and the district judge were not published but are set forth verbatim in the printed record (R. 25, 95-100, 106).

JURISDICTION.

The judgment of the Court of Appeals was entered October 1, 1954 and rehearing was denied November 18, 1954. Jurisdiction to review said judgment by writ of certiorari is conferred upon this Court by section 24c of the Bankruptcy Act, 11 U.S.C. 1952 ed., section 47c, volume 1, page 1030 and section 1254 of Title 28 of the United States Code, 28 U.S.C. 1952 ed. section 1254, volume 3, page 4182.

STATUTE INVOLVED.

This controversy involves Section 14c of the Bankruptcy Act, 11 U.S.C. 1952 ed. section 32c, volume 1, page 1025. It also involves General Order No. 47 of the General Orders in Bankruptcy, Supreme Court of the United States, 11 U.S.C. 1952 ed. following section 53, volume 1, page 1046 and Rule No. 52 (a) of the Federal Rules of Civil Procedure, 28 U.S.C. 1952 ed., rule 52 (a), volume 3, page 4334. Said statute, general order, and rule are set forth verbatim in the appendix hereto (Respondent's appendix, pp. 1a, 2a).

QUESTIONS PRESENTED FOR REVIEW.

1. Should this Court set aside an order of a referee in bankruptcy granting a discharge to a bankrupt when such order is supported by substantial evidence and ex-

tensive findings of fact, and which order was affirmed by the district judge and the Court of Appeals?

2. Was petitioner entitled to urge for the first time in the Court of Appeals grounds of opposition to discharge not included in any specification or other pleading presented to the referee or the district judge?

STATEMENT OF THE CASE.

On August 6, 1952, a voluntary petition in bankruptcy was filed in the United States District Court, for the Northern District of Illinois, Eastern Division, by respondent Ray Simon, individually, and by Ray Simon Optical Co., a limited partnership of which respondent was a general partner (R. 1). The jurisdiction of the district court was based upon Section 2 of the Bankruptcy Act, 11 U.S.C. 1952 ed., section 11, volume 1, pages 1019-1020. On September 2, 1952, respondent and the partnership were duly adjudged bankrupt pursuant to said Act.

On January 13, 1953, petitioner filed a specification (R. 6-8), setting forth the following five grounds of objections to discharge of the bankrupt:

I. The bankrupt partnership had failed to keep books and records from which its financial condition could be ascertained.

II. The bankrupt partnership had obtained credit by use of a materially false written financial statement.

III. Within twelve months prior to bankruptcy, the bankrupt Simon fraudulently concealed certain unspecified assets.

IV. Simon failed to explain an alleged shrinkage of assets of the bankrupt partnership.

V. Simon made false oaths in that:

(a) He scheduled certain liabilities as having been incurred in 1952 which were actually incurred in 1951.

(b) He denied owning an interest in Opticon Corporation.

On February 11, 1953, the bankrupts filed a motion to dismiss the above specification (R. 9-10), which motion was sustained on February 26, 1953, by order of the referee to whom said bankruptcy proceedings had been generally referred (R. 11). Pursuant to said order, the objecting creditor was given leave to file an amended specification on or before March 19, 1953.

On March 19, 1953, the objecting creditor filed an amended specification (R. 12-16) setting forth the following three grounds of objection to discharge:

I. The bankrupts had failed to explain satisfactorily losses of assets, or a deficiency of assets to meet the liabilities of either of them, in that:

(a) The inventory of the partnership at book value on December 1, 1951 was $80,030.38, whereas on August 6, 1952, the inventory was $30,000.00 according to the bankrupts' balance sheet (Obj. Cr. Ex. 13, R. 24, 51-52), and $22,346.73, according to the appraisal of Frank M. McKey.

(b) Based on the closing inventory figure of $30,000.00 above referred to, the bankrupt partnership sustained a loss of $63,381.94 during the period from December 1, 1951 to August 6, 1952.

(c) The bankrupt Simon had failed to explain an alleged oral statement allegedly made to an undisclosed third party that he owned a one-third interest in Opticon Corporation.

II. The bankrupts failed to keep adequate books and records in that:

(a) The books did not reflect the alleged loss of $63,381.94 hereinabove referred to.

(b) During the period from December 1, 1951 to August 6, 1952, the bankrupt partnership had issued twenty checks to cash.

III. The bankrupt Ray Simon committed an offense punishable by imprisonment in that he knowingly and fraudulently scheduled the claims of six creditors as having been incurred in 1952, whereas said claims were actually incurred in 1951.

On March 24, 1953, the bankrupts filed a motion to dismiss the amended specification (R. 16-18). On March 26, 1953, the bankrupts in support of their motion filed the affidavit of Rudolph O. Weinberg (R. 22-24) wherein the affiant stated that the balance sheet referred to in the amended specification (Obj. Cr. Ex. 13, R. 24, 51-52) was prepared by him while in the employ, and at the request, of Arthur P. Murphy the receiver appointed by the court. Weinberg further stated that at the request of the receiver he did not take a physical inventory but merely made a personal estimate of the liquidation value thereof. Attached to and made part of Weinberg's affidavit was a photostat of the balance sheet wherein the inventory valuation was specifically characterized as an estimate (R. 24).

On March 26, 1953, an order was entered by the referee sustaining the motion of the bankrupt to dismiss objections Nos. I (c), II and III and a hearing was set to consider the remaining objections I (a) and I (b) (R. 25).

Hearings were held by the referee on objections I (a) and I (b) on March 30 and March 31, 1953. At the con-

clusion of the objecting creditor's proof, the bankrupt moved to dismiss these remaining objections (R. 82). The referee stated that he was prepared to rule on the bankrupt's motion, but indicated that some explanation should be made in the record as to the ownership of Opticon Corporation. Accordingly, the referee overruled the bankrupt's motion for the sole purpose of obtaining such testimony (R. 83-84). The bankrupt Ray Simon, being then present in court, was thereupon called as a witness (R. 84). He testified that he did not own any interest in Opticon Corporation, but that his wife, Sadie Simon, using funds which she borrowed on certain insurance policies which had been assigned to her in 1943 or 1944, invested $3,600.00 in said corporation (R. 84-93).

At the conclusion of Simon's testimony, and after cross-examination by the petitioner, the referee concluded that the objecting creditor had failed to make out a case and thereupon sustained the bankrupt's motion to dismiss the remaining objections to discharge (R. 93-94). The referee entered an order containing extensive findings of fact and ordered that the motion of the bankrupt to dismiss the objections be sustained and the objections were thereupon dismissed (R. 95-100).

On April 30, 1953 the objecting creditor filed a petition for review of the orders entered by the referee on March 26 and 31, 1953 (R. 100-103). On February 11, 1954 the district judge denied the petition for review and affirmed the orders and findings of the referee (R. 106).

On March 12, 1954 the objecting creditor filed a notice of appeal from the order of the district judge (R. 107). On October 1, 1954, the United States Court of Appeals for the Seventh Circuit unanimously affirmed the district judge (Petitioner's appendix, pp. 23-24, 25-27). On November 18, 1954 a rehearing was denied by the Court of Appeals (Petitioner's appendix, p. 24).

ARGUMENT.

REASONS FOR DENIAL OF CERTIORARI.

I.

This cause involves no question of federal law which has not been decided by this Court.

It is apparent from the foregoing statement of the case and from the opinion of the Court of Appeals (Petitioner's appendix pp. 25-27) that this cause involves no novel questions of federal law, but is merely a routine controversy concerning the granting of a discharge in bankruptcy.

It will be noted that petitioner's original specification of objections to discharge (R. 6-8) included every ground permitted by the Bankruptcy Act, excepting only a prior discharge (Section 14 c (5)), and failure to obey a court order (Section 14 c (6)). By the time this cause reached the Court of Appeals, petitioner had abandoned all of its original grounds, except the alleged failure satisfactorily to explain losses or deficiency of assets (See opinion of Court of Appeals, petitioner's appendix, p. 25). In the Court of Appeals, petitioner for the first time attempted to urge an additional ground of objection, *viz.*, failure to schedule certain insurance policies (See opinion of Court of Appeals, petitioner's appendix, p. 27).

The Court of Appeals based its opinion on the following well-established propositions of law:

(a) Findings of fact made by a referee and affirmed by a district judge, when supported by substantial evidence, cannot be set aside on appeal.

(b) Points not urged before a referee or district judge cannot be considered for the first time on appeal.

The following authorities, and others too numerous to cite, establish beyond question that the findings of the referee, supported as they were by substantial evidence, and affirmed by the district judge, will not be set aside on appeal:

General Order No. 47, General Orders in Bankruptcy, Supreme Court of the United States, 11 U.S.C. 1952 ed., following Section 53, volume 1, page 1046 (respondent's appendix, p. 2a); Rule 52 (a), Federal Rules of Civil Procedure, 28 U.S.C. 1952 ed., rule 52a, volume 3, page 4334 (Respondent's appendix, p. 2a); *Manson* v. *Williams,* 213 U. S. 453, 455, 456, 457; *Boyce* v. *Chemical Plastics, Inc.,* 8 Cir., 175 F. 2d 839, 841-842, cert. den. 338 U. S. 828; *Wetzel* v. *Schaeffer,* 5 Cir., 124 F. 2d 308, 310, cert. den., 316 U. S. 678; In re *Santos,* 7 Cir., 211 F. 2d 887, 889; *Losey* v. *Losey,* 9 Cir., 204 F. 2d 684, 685; *Staunton Industrial Loan Corp.* v. *Wilson,* 4 Cir., 190 F. 2d 706, 708; *Gordon* v. *Woods,* 1 Cir., 189 F. 2d 76, 78; In re *Wolf,* 3 Cir., 165 F. 2d 707, 709-710; *Albinak* v. *Kuhn,* 6 Cir., 149 F. 2d 108, 111; *Morris Plan Industrial Bank* v. *Henderson,* 2 Cir., 131 F. 2d 975, 976-977; *Fish* v. *East,* 10 Cir., 114 F. 2d 177, 200.

The following cases make it clear that new points may not be raised on appeal:

Boyce v. *Chemical Plastics, Inc.,* 8 Cir., 175 F. 2d 839, 843, cert. den. 338 U. S. 828; In re *Sound, Inc.,* 7 Cir., 171 F. 2d 253, 255, cert. den. *sub nom. Atwell Building Corporation* v. *Sound, Inc.,* 336 U. S. 962; In re *Brown,* 2 Cir., 87 F. 2d 306, 308, cert. den. *sub nom. Hotel Syracuse Men's Shop* v. *Haight,* 301 U. S. 696; *Feick* v. *Stephens,* 6 Cir., 250 Fed. 185, 190, cert. den. *sub nom. Union Savings Bank & Trust Co. of Cincinnati* v. *Feick,* 248 U. S. 562; *Barlow* v. *Federal Land Bank of Berkeley,* 10 Cir., 139 F. 2d 96, 97; *United States* v. *Harris,* 9 Cir., 100 F. 2d 268, 276; *Huntley* v. *Snider,* 1 Cir., 86 F. 2d 539, 540; *Frederici*

v. *Fine,* 3 Cir., 34 F. 2d 284; *Household Supply Co.* v. *Whitaker,* 5 Cir., 236 Fed. 730, 731; *Shaffer* v. *Koblegard Co.,* 4 Cir., 183 Fed. 71, 72-73.

Clearly, this cause does not present any novel question which merits the consideration of the Supreme Court of the United States.

II.

The Court of Appeals neither misconstrued nor misapplied the proviso of Section 14 c (7) of the Bankruptcy Act.

It is noteworthy that Rule 19 of this Court does not specify the misconstruction of a statute as sufficient ground for granting the writ of certiorari. Also, it must be observed that the statutory provision which was supposedly misconstrued is not even mentioned in the opinion of the Court of Appeals. (Petitioner's appendix, pp. 25-27). Although this by itself is sufficient to refute petitioner's argument, we will nevertheless demonstrate that petitioner, and not the courts below, misconstrued and distorted Section 14c of the Bankruptcy Act, 11 U.S.C. 1952 ed. section 32c, volume 1, page 1025 (Respondent's appendix, p. 1a).

Section 14c as amended, provides that:

"The court shall grant the discharge unless satisfied that

* * *

(listing seven specified grounds for denial of discharge)

* * *

Provided, That if, upon the hearing of an objection to a discharge, the objector shall show to the satisfaction of the court that there are reasonable grounds for believing that the bankrupt had committed any of the acts which, under this subdivision, would pre-

vent his discharge in bankruptcy, then the burden of proving that he has not committed any of such acts shall be upon the bankrupt."

To carry the burden of proof imposed by section 14c, petitioner was required to establish by a fair preponderance of evidence that the bankrupt partnership had sustained unexplained losses. In re *Leichter,* 3 Cir., 197 F. 2d 955, 958-959, cert. den. *sub nom. Dworsky* v. *Leichter,* 344 U. S. 914; In re *Schwartz,* 2 Cir., 135 F. 2d 362, 363; In re *Smatlak,* 7 Cir., 99 F. 2d 687, 689; *Shanberg* v. *Saltzman,* 1 Cir., 69 F. 2d 262, 263; In re *Milne,* 40 F. Supp. 89, 91-92; *Collier on Bankruptcy,* 14th Ed. volume 1, section 14.10, page 1293. Suspicious circumstances or speculation alone are not reasonable grounds and do not shift the burden. In re *Leichter,* 3 Cir., 197 F. 2d 955, 957, 958-959, cert. den. *sub nom. Dworsky* v. *Leichter,* 344 U. S. 914; In re *Milne,* 40 F. Supp. 89, 91-92; *Collier on Bankruptcy,* 14th Ed. volume 1, section 14.10, page 1293.

Under no reasonable construction can petitioner be said to have carried his burden of proof. In fact, the only objection to discharge properly before the referee involved the alleged shrinkage of inventory from $80,000.00 at cost in November, 1951 to $30,000.00 or $22,000.00 in August, 1952. The undisputed testimony of the witnesses called by the objector (R. 57, 78), established that the $30,000.00 and $22,000.00 valuations relied on by petitioner represented not cost, but estimated bankruptcy liquidation values; and that was precisely the conclusion of the referee (R. 99). The undisputed evidence further established (R. 62) and the referee so found (R. 96, 99) that the cost value of the closing inventory was approximately $80,000.00. On the undisputed evidence, therefore, it is apparent that petitioner failed to show by the required preponderance of evidence that reasonable

grounds exist for denial of the bankrupt's discharge. As a matter of fact, the evidence introduced by petitioner during the hearings before the referee clearly established that the objection was entirely without merit.

III.

The decision of the Court of Appeals in this cause does not conflict with the decision of any other Court of Appeals.

In the first portion of the argument, we demonstrated that the propositions relied on by the Court of Appeals in this cause had been followed in each of the ten principal judicial circuits of the United States. In his entire brief, petitioner has failed to cite one single authority to the contrary.

Petitioner nevertheless insists that a conflict of circuits is involved, citing the following: *Knetzer* v. *Larkin,* 2 Cir., 178 F. 2d 532, 534; In re *Sperling,* 2 Cir., 72 F. 2d 259, 260, 261; *Federal Provision Co.* v. *Ershowsky.*2 Cir., 94 F. 2d 574, 575; *Brenner* v. *Gaunce,* 9 Cir., 28 F. 2d 606; and *Shapiro & Ornish* v. *Holliday* (incorrectly cited by petitioner as *Shapiro* v. *Ornish*), 5 Cir., 37 F. 2d 407, affirming In re *Shapiro & Ornish,* 37 F. 2d 403. Petitioner cited these same cases in the Court of Appeals and in his reply brief in that court conceded that in each of these cited cases there was an admitted, undisputed shrinkage of specific assets; that in each there was a timely demand for an explanation, and that in each of these cases the only question before the court was the sufficiency of the bankrupt's explanation. Clearly, these citations are not in conflict with or even applicable to the present case where the undisputed evidence and the extensive findings of the referee, affirmed by the district judge, establish conclusively that there was no shrinkage whatsoever.

CONCLUSION.

This case involves nothing more than a routine question of discharge in a bankruptcy case. There were extensive hearings before the referee in bankruptcy who, at the conclusion thereof, made twenty-one separate findings of fact (R. 96-99) and dismissed the objections to discharge. The district judge and the Court of Appeals affirmed. No new or novel questions are involved and the decisions in all the circuits are uniformly in accord.

Respondent respectfully submits that no valid reasons have been presented for issuance of the writ of certiorari, and therefore the petition should be denied.

Respectfully submitted,

NORMAN H. NACHMAN,
38 South Dearborn Street,
Chicago, Illinois,
Counsel for respondent.

LOUIS W. LEVIT,
Of Counsel.

APPENDIX.

1. *Bankruptcy Act, Section 14c.*

(c) The court shall grant the discharge unless satisfied that the bankrupt has (1) committed an offense punishable by imprisonment as provided under section 152 of Title 18; or (2) destroyed, mutilated, falsified, concealed, or failed to keep or preserve books of account or records, from which his financial condition and business transactions might be ascertained, unless the court deems such acts or failure to have been justified under all the circumstances of the case; or (3) obtained money or property on credit, or obtained an extension or renewal of credit, by making or publishing or causing to be made or published in any manner whatsoever, a materially false statement in writing respecting his financial condition; or (4) at any time subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy, transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed, any of his property, with intent to hinder, delay, or defraud his creditors; or (5) in a proceeding under this title commenced within six years prior to the date of the filing of the petition in bankruptcy had been granted a discharge, or had a composition or an arrangement by way of composition or a wage earner's plan by way of composition confirmed under this title; or (6) in the course of a proceeding under this title refused to obey any lawful order of, or to answer any material question approved by, the court; or (7) has failed to explain satisfactorily any losses of assets or deficiency of assets to meet his liabilities: *Provided*, That if, upon the hearing of an objection to a discharge, the objector shall show to the satisfaction of the court that there are reasonable grounds for believing that the bankrupt has committed any of the acts which, under this subdivision, would prevent his discharge in bankruptcy, then the burden of proving that he

has not committed any of such acts shall be upon the bankrupt.

2. *General Order No. 47, General Orders in Bankruptcy, Supreme Court of the United States.*

Unless otherwise directed in the order of reference the report of a referee or of a special master shall set forth his findings of fact and conclusions of law, and the judge shall accept his findings of fact unless clearly erroneous. The judge after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

3. *Rule No. 52(a), Federal Rules of Civil Procedure.*

Rule 52. Findings by the Court.

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41 (b).

FILED
MAR 5 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 574

In the Matter of RAY SIMON, Individually and RAY SIMON OPTICAL CO., etc., et al., Bankrupt,

ROSCOE BIFOCAL CO., INC., a corporation,
Petitioner,

vs.

RAY SIMON, Individually and as General Partner of RAY SIMON OPTICAL CO.,
Respondent.

Petitioner's Reply to Respondent's Brief

MAX CHILL
100 W. Monroe St.
Chicago, Illinois.
ARTHUR CHITTICK
29 South La Salle St.,
Chicago, Illinois.

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL., LA KEVIEW 5-6581